

Newsletter

In this edition of our newsletter, we provide an update on the **soft opening of the trademark registration system**. The Myanmar Ministry of Commerce ("MOC") has announced that it will start early acceptance of certain trademark applications for existing trademarks from October 1, 2020 ahead of the new Trademark Law (Law No. 3/2019) (the "**Trademark Law**") coming into effect. We set out below what this means for your business, based on our conversations with the MOC, and how we can assist you to register your intellectual property in Myanmar.

LEGAL UPDATE

MYANMAR ANNOUNCES THE SOFT OPENING OF ITS NEW TRADEMARK REGISTRATION SYSTEM FROM OCTOBER 1, 2020

The MOC issued Order No. 63/2020 dated August 28, 2020 ("**Order**") announcing that it would start early acceptance of certain trademark registration applications from October 1, 2020 during a "**Soft Opening**" period prior to the effective date of the Trademark Law (Law No. 3/2019) for trademarks already (i) in use in Myanmar or (ii) registered under the Registration of Instruments Law (Law No. 9/2018) ("**Existing Trademarks**").

(1) Period for filing Existing Trademarks

Existing Trademarks may be filed during the Soft Opening period, from October 1, 2020 until the MOC commences the registration of all trademarks under the Trademark Law. Although the effective date of the Trademark Law has yet to be officially announced, the MOC's assumption appears to be that it will take effect on April 1, 2021. Accordingly, registrations of Existing Trademarks are expected to be accepted over the six-month period from October 1, 2020 to March 31, 2021.

Existing Trademarks may be filed via an electronic registration system. Applicants will need to submit supporting documents to prove that the Existing Trademarks are eligible for registration during the Soft Opening period, for example, a copy of the Declaration of Ownership of Trademark registered with the Registration Office, evidence of the announcement of the trademark in newspapers in Myanmar and/or evidence of use of trademark in advertisements in the Myanmar market.

(2) Effect of the registration during the Soft Opening period

Trademarks filed during the Soft Opening will be registered with effect from the date on which the formal acceptance of trademark registration applications under the Trademark Law commences (that is, after the Trademark Law takes effect). This is notwithstanding the date the application is actually filed to register an Existing Trademark. However, it is advisable to register Existing Trademarks during the Soft Opening period, as it is likely that there will be some transitional issues in implementing the Trademark Law, including technical issues with the electronic registration system and also as the regulatory authorities develop their administrative practices regarding the processing of applications. For this reason, it is prudent to prepare the documentation for an application for Existing Trademarks in advance. However, it is advisable for the actual application for Existing Trademarks to be made after the authorities have had some time to establish their administrative practices, and not immediately after the commencement of the Soft Opening period.

(3) Registration under the Registration of Instruments Law

For those Existing Trademarks which have already been used in Myanmar, but which not yet been registered with the Registration Office, applicants need to prove that they have used the Existing Trademarks in Myanmar. Although theoretically possible, it is unclear under the Order what kind of documentary evidence is required for this purpose.

Accordingly, it may be advisable to register Existing Trademarks with the Registration Office prior to registering under the Trademark Law during the Soft Opening period, if not already registered. Existing

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Trademarks will continue to be registrable under the Registration of Instruments Law until the Trademark Law comes into effect (that is, even after the commencement of the Soft Opening period on October 1, 2020). However, it is recommended to register under the Registration of Instruments as soon as possible to ensure that registration can be made under the Trademark Law before the end of the Soft Opening period.

Even where Existing Trademarks are registered with the Registration Office under the Registration of Instruments Law, if the registration is under the name of an agent or an importer in Myanmar rather than under the name of the owner of the Existing Trademark, we recommend that you seek professional advice prior to registering the Existing Trademark under the Trademark Law, including in relation to who should register the trademark. This will help you to avoid any issues with the enforcement of your trademarks under the Trademark Law.

It is also recommended to keep a close watch on the MOC's further developments for the treatment of the filings during the Soft Opening.

We can also assist you to register your trademarks under the Trademark Law through the new electronic registration system. Please do not hesitate to contact us if you would like more information about the Trademark Law, including registering your trademarks in Myanmar.



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